IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

CHURCH OF SCIENTOLOGY INTERNATIONAL, Plaintiff and Respondent, v. GERALD ARMSTRONG, Defendant and Appellant.	Case No. _____ Court of Appeal Docket No. B069450 Los Angeles County Superior Court No. BC052395

From A Decision By The Court of Appeal
Second Appellate District, Division Four

ANSWER TO PETITION FOR REVIEW

ANDREW H. WILSON
State Bar No. 063209
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104
(415) 391-3900

ERIC M LIEBERMAN
RABINOWITZ, BOUDIN, STANDARD
KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003
(212) 254-1111

MICHAEL LEE HERTZBERG
740 Broadway, Fifth Floor
New York, New York 10003
(212) 982-9870

Attorneys for Plaintiff and Respondent

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ANSWER TO PETITION FOR REVIEW

INTRODUCTION AND SUMMARY

Petitioner asks this Court to review a quotidian, "not to be published" decision of the Court of Appeal, Second Appellate District, affirming a preliminary injunction order entered by Los Angeles County Superior Court Judge Ronald M. Sohigian requiring petitioner Armstrong to comply with certain terms of a written settlement agreement he signed, while represented by counsel, pursuant to which Armstrong received approximately $800,000. The preliminary injunction order is narrow and specific: it prohibits Armstrong from "voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the [plaintiff and certain other entities and individuals associated with plaintiff]", or voluntarily assisting any person "intending to make, -- press, . . . arbitrate, or . . . litigate" such a claim (1715).[1/] The injunctive order also contains several explicit exceptions, which make clear that Armstrong is free to testify as a witness, accept service of process, and report criminal conduct to proper authorities. *Id.*[2/]

1/ References to "__" are to pages in Appellant's Appendix in Lieu of Clerk's Transcript in the Court of Appeal. References to "RA ___", are to pages in Respondent's Appendix in the Court of Appeal.

2/ The injunctive order states:

> The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

In entering the preliminary injunction, Judge Sohigian made the requisite factual findings that the threatened acts which he enjoined "would do irreparable harm to plaintiff which could not be compensated by monetary damages" (1714); that such irreparable harm would outweigh any potential harm to Armstrong resulting from the injunction (*id.*); that the limited injunction "will preserve the status quo pending trial" (*id.*); and, most significantly, that "There is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order." *Id.* Indeed, Judge Sohigian explicitly noted the issues raised by the controversy (1716), and found that plaintiff was likely to prevail on its claims of the existence of a contract, the lack of duress, and the legality of terms of the settlement agreement pursuant to which defendant agreed "not to assert or exercise rights which [he] might otherwise have." *Id.*

In affirming, the Court of Appeal emphasized the "very limited" scope of review of an appeal from a preliminary injunction. Slip op. at 8. It concluded:

> that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits . . . , was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

Id. at 2.

It is difficult to imagine a case in a more inappropriate posture for this Court to exercise its extraordinary powers of review than this case. No issues of law or determinations of fact have finally been adjudicated by either the Superior Court or the Court of Appeal. No fundamental conflict of legal doctrine among the lower courts or with this Court has been or can be demonstrated. All that was decided by the Court of Appeal in the present interlocutory posture of the case is that the Superior Court did not abuse its discretion in weighing the equities,

including the respective likelihoods of irreparable harm and possibilities of success on the merits, and issuing preliminary relief. Such record intensive and temporary judicial action is not a basis for this Court to grant review.

STATEMENT OF THE CASE

Proceedings Below

Respondent Church of Scientology International filed its complaint on February 4, 1992, seeking damages and injunctive relief (RA 1). Respondent alleged that it, and other entities and individuals associated with it and the Scientology religion (hereinafter collectively referred to as "the Church"), had entered into a settlement agreement with Armstrong on December 6, 1986, settling and disposing of litigation claims of Armstrong and providing Armstrong with substantial compensation. The complaint alleged that the settlement agreement contained a number of additional terms, the most significant of which required Armstrong to refrain from voluntarily aiding others in litigation against the Church, to return to the Church certain private documents that Armstrong had taken from the Church, to refrain from discussing with third parties his experiences with Scientology, and to keep confidential the terms of the Agreement itself.[3/]

The complaint went on to allege that beginning in June 1991 and continuing until the institution of the present lawsuit, Armstrong openly had entered upon a course of action in derogation of his duties and obligations under the settlement agreement by voluntarily providing

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[3/] The Agreement also provided for the sealing of the Superior Court file. A challenge to the sealing order was rejected in *Church of Scientology of California* v. *Armstrong* (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917.

aid and assistance to the Church's litigation adversaries, including performing paralegal services for the opposing attorneys in such litigation, providing declarations which purport to describe Armstrong's experiences with Scientology, and submitting copies of documents that Armstrong agreed to keep confidential, including copies of the settlement agreement itself.

Concurrently with filing its complaint, the Church sought a preliminary injunction against further continuing violations of the settlement agreement. The Church submitted declarations and exhibits documenting Armstrong's violations and his threats to commit further violations.

In opposing the motion, Armstrong did not deny the acts alleged, but rather sought to renounce the applicable portions of the settlement agreement (but not, of course, the portions favorable to him). Armstrong argued that the settlement agreement violates his right to freedom of speech and is contrary to public policy, that it is invalid for purported lack of mutuality of obligation, and that he is not bound by it because he allegedly signed it under duress. In response to the latter assertion, the Church submitted declarations and a videotape of the meeting at which Armstrong signed the settlement agreement in the presence of his counsel, demonstrating the non-coercive and voluntary nature of the agreement.

After extensive proceedings and oral argument before the Superior Court, the Superior Court issued its order on May 28, 1992, preliminarily enjoining Armstrong from *voluntarily* assisting any person (other than a governmental entity) litigating or arbitrating, or intending to make, press, litigate or arbitrate a civil claim against the Church. The Superior Court stated (1716):

> The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests

> of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

Armstrong appealed. In what the Court of Appeal described as a "shotgun-style brief," Armstrong "offer[ed] more than a dozen separate contentions against enforcement" (slip op. at 10). The very last point of the numerous points he raised was his contention that the settlement agreement violates public policy. *See* Appellant's Opening Brief, p. 42. Nowhere in his brief did Armstrong argue the estoppel and unenforceability points raised for the first time in Points III (F) and (G) of his petition to this Court. *See* Appellant's Opening Brief, *passim*; Appellant's Reply Brief, *passim*.

The Court of Appeal affirmed, finding that the Superior Court had not abused its discretion in issuing the preliminary injunction.

> Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and

> balanced the interests asserted by Armstrong. The court gratned a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability the Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Slip op. at 9.

The Court found it appropriate to address specifically only two of Armstrong's "shot-gun style" arguments. First, it held that "although Armstrong's 'freedom of speech' is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech." Slip op. at 9, citing cases. Second, the Court of Appeal held that the "exceptions in the trial court's injunctions assured that the injunction would *not* serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpoenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities." *Id.* at 10, citing cases.

In concluding, the Court of Appeal emphasized that the Superior Court "expressly did not decide the ultimate merits . . . [T]he preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against the Church, in violation of his own agreement." *Id.*

Statement of Relevant[4/] Facts

On December 6, 1986, the Church entered into a settlement agreement with Armstrong (072), as well as a number of other persons involved in litigation against it (089).

At the time, the Church and Armstrong were engaged in a bitter litigation arising out of Armstrong's involvement as a staff member of the Church, and out of his actions in taking from the Church, without authorization, as many as 15,000 pages of original and copied confidential documents (1511-12). The documents included such items as the personal diaries and journals of L. Ron Hubbard, the founder of the Scientology religion, and correspondence between Mr. Hubbard and his family, friends and associates (1527). The Church of Scientology of California and Mary Sue Hubbard, Mr. Hubbard's wife, had sued Armstrong for return of the documents and for damages for conversion, breach of fiduciary duty and confidence, and invasion of privacy (1511-12); Armstrong had cross-claimed for damages for, *inter alia*, fraud and emotional distress arising out of his long-term involvement with the Church (1388).[5/]

[4/] Almost all of Armstrong's statement of "facts" concerns allegations, purported events, and claims entirely unrelated to the narrow issues involved in this appeal, such as Armstrong's obviously prejudiced views about L. Ron Hubbard, his false and distorted claims about a non-existent "fair game" policy and the RPF, and his wholly negative attitudes and claims about Scientology practices.

This case involves a settlement agreement which Armstrong admittedly signed, pursuant to which he admittedly received nearly one million dollars, and which he freely concedes to have breached. No other facts are relevant, and we decline Armstrong's attempt to litigate here issues and claims not part of this case.

[5/] At the time of the settlement agreement, Armstrong had submitted the documents under seal to the Superior Court clerk, pursuant to order of that court. The Church's claims, which had been severed from the cross-claims, had been tried before Judge Breckenridge in May 1984. In a decision dated June 20, 1984 (467), Judge Breckenridge had found that the Church had proven a prima facie case in support of each of its claims, but nevertheless ruled in favor of Armstrong (continued...)

The settlement agreement settled all Armstrong's cross-claims. With respect to the Church's claims, Armstrong agreed to the return to the Church of all originals and copies of the documents. The Church's damage claims against Armstrong, which were the subject of a pending appeal, which had been fully briefed and argued, were not settled (75), but, in a series of separate agreements, executed concurrently, were in effect limited to a claim for nominal damaees.[6/]

Under the terms of the settlement agreement, Armstrong received an amount of money, which was to be determined between himself, his counsel and counsel for the other litigants who were also settling their disputes with the Church. The amounts of the settlements were to be kept confidential (74) Subsequent disclosures by Armstrong revealed that he received $800,000 (109, 113).

[5/] (...continued)
on the basis of a novel justification defense based on Armstrong's subjective state of mind. The Church's appeal from Judge Breckenridge's decision was pending and had been fully briefed and argued at the time of the settlement agreement. Armstrong's cross-claims remained to be tried.

[6/] Incredibly, Armstrong now argues that his attorney did not inform him of these separate agreements, and that he somehow was defrauded by them. Even in the highly unlikely event that Armstrong's attorney did not inform him of these agreements, Armstrong has no cause to complain, since the agreements inured entirely to *his* benefit.

Armstrong also falsely claims that the separate agreements were an attempt to establish a sham appeal from Judge Breckenridge's decision. The fact is that that appeal, as noted above, already had been fully briefed and argued, and decision on it was expected imminently. When the Court of Appeal dismissed the appeal as premature, because of the pending counterclaims, it became necessary for the Church to renotice and rebrief the appeal, which it did. In its new brief to the Court of Appeal, the Church fully apprised that Court of the full extent of the settlement agreement, including the separate agreements. The Church also agreed that Armstrong could file briefs and make arguments in opposition to the renoticed appeal, which he did.

Because prior to the settlement Armstrong had engaged in vitriolic public attacks on the Church and had, in the Church's view, stirred up unwarranted litigation against the Church by others, a primary incentive for the Church in making a settlement was to obtain Armstrong's agreement not to continue to publish or discuss matters relating to the Church, to maintain confidentiality with respect to his experiences with the Church, and to refrain from voluntarily assisting others in litigation against the Church (78). During the settlement negotiations, the parties specifically discussed these important non-disclosure provisions (91).

Armstrong entered the agreement freely and knowingly without threat, intimidation, or pressure after sufficient investigation and receipt of counsel's advice (84, 86). He specifically acknowledged that: (1) his attorney had explained the legal and factual ramifications of the settlement agreement, (2) he knew it was a block settlement involving all of his attorney's clients who were litigating against the Church, (3) he had read and understood the agreement and knew what he was signing, and (4) there was no duress or coercion involved in his execution of the settlement (91). A videotape memorialized the signing of the agreement, which was attended by Armstrong, his counsel, counsel for CSI, an officer of CSI, and a notary public (97-108).

Notwithstanding Armstrong's agreements to refrain from aiding litigants against the Church, despite his promises of non-disclosure and non-discussion, and regardless of his covenant not to give evidence gratuitously, Armstrong has proceeded to involve himself in litigation against the Church and has voluntarily and gratuitously provided evidence in proceedings against the Church (125-128, 143-144, 169-170, 182-183).

Armstrong's direct involvement in litigation against the Church occurred, for example, when he took a position working for Joseph Yanny, an attorney who was representing

two former Church members, Richard and Vicki Aznaran, in a $70 million lawsuit they had filed in federal court against the Church and related entities (123, 125-128). Armstrong went out of his way to participate in the litigation by agreeing to travel to Los Angeles for the purpose of helping Yanny and the Aznarans (127). He requested that he be paid for his services (127), and he admitted that he voluntarily wrote a declaration for Yanny and the Aznarans (128). Yanny also admitted that he hired Armstrong specifically for the purpose of conducting litigation against the Church (123). In assisting Yanny and the Aznarans, Armstrong knowingly violated Paragraphs 10 and 7(G) of the settlement agreement (81, 84).

The federal court on its own motion eventually disqualified Yanny as counsel for the Aznarans since Yanny had for several years previously served as general counsel for the Church. After the federal court prevented Yanny from becoming counsel of record, Armstrong moved from Yanny's employ and gave his assistance to Ford Greene, making it clear that Armstrong's intent was to involve himself in litigation against the Church, as opposed merely to finding employment in a law office. In a letter dated August 21, 1991, Armstrong admitted that he was working in Greene's office and performed such tasks as giving assistance to Greene in preparing responses to a summary judgment motion in the Aznaran litigation (143-144). Armstrong has also provided declarations to be used as evidence in favor of the Aznarans in their lawsuit against the Church (147-151). Armstrong has apparently continuously worked with Greene since that first association on the *Aznaran* case (169-170).

In a declaration of November 1991, Armstrong took the aggressive position that he had never had the intention of abiding by the settlement agreement. He stated that he read and understood the import of the provisions of the settlement agreement at the time he signed the

agreement, but he raised the rather inexplicable excuse that he had told his own lawyers, at the time of settlement, that he had no intention of adhering to the agreement (1389-1393).

REASONS WHY THE PETITION SHOULD BE DENIED

I. Review of an Interlocutory Order in Which No Final Determinations of Law or Fact Have Been Made is Inappropriate and Unnecessary

Review by this Court is exercised in extraordinary cases to settle important questions of law or to resolve conflicts among the lower courts on questions of law. Supreme Court Rule 29(a). This Court does not sit to review the sifting of the facts and circumstances of particular disputes undertaken by the superior courts, within their discretion, and reviewed by the courts of appeal pursuant to an abuse of discretion standard. *People* v. *Davis* (1905) 147 Cal. 346, 349, 81 P. 718; 9 Witkin, *California Procedure* § 700, p. 672 (3d ed. 1994).

In the present context, no question meriting review has been presented. Neither the Superior Court nor the Court of Appeal has made ultimate findings of fact or issued binding rulings of law. The Superior Court, acting in an area of great discretion, has sifted through the preliminary record and issued a very limited injunction to preserve the status quo and prevent irreparable harm. It did not dispositively decide any legal questions.

The trial court's ruling in this case demonstrates the careful attention with which Judge Sohigian approached his task. The trial court emphasized that the "law appropriately favors settlement agreements" (1716), and that "litigators have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have." *Id.* On the other hand, the court took cognizance of "public policy" limitations on the freedom of contract, in particular that private parties may not make agreements which

would undermine "the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitration." *Id.* Accordingly, the trial court narrowly tailored its order to prohibit precisely those acts which Armstrong repeatedly had committed in violation of the agreement and for which the trial court found there was no adequate legal remedy, while excluding from the scope of the injunction acts which might be necessary for the proper functioning of the judicial system. Thus, Armstrong was prohibited from *voluntarily* assisting any litigant or potential litigant against the Church, *excluding* a government entity or organ. He explicitly is permitted to be "reasonably available for the service of subpoenas upon him," to accept service of subpoenas without resistance, to testify, and to report criminal conduct to proper authorities.

The trial court also considered and rejected, on the basis of the record, Armstrong's "claim of duress," and noted that Armstrong "was substantially compensated as an aspect of the agreement." *Id.*

Accordingly, the conclusion is ineluctable that the Superior Court committed no abuse of discretion in granting the injunction. The Church submitted detailed factual showings of Armstrong's intentional breaches and express violations of the settlement agreement. The Church's evidence was borne out not only by Armstrong's conduct but also by his own statements regarding his intentions. In view of the evidence, the trial judge was completely justified in concluding that the Church was likely to prevail on the merits. Where a party seeks to enforce a negative covenant, such as a promise not to do a particular thing, the appropriate remedy is an injunction restraining the defendant from its violation of the covenant. *See*, 6 Witkin, *California Procedure*, Provisional Remedies, § 263, p. 225 (3d ed. 1985).

In addition, the Church showed that it would suffer interim harm and irreparable injury if the Court failed to issue the injunction. Armstrong continuously engages in conduct detrimental to the Church by assisting adversaries of the Church in pursuing litigation. On the other hand, imposition of the injunction fails to create any hardship or injury for Armstrong, aside from being unable to continue to violate the agreement.

In view of the compelling evidence showing Armstrong's repeated and ongoing violations of the settlement agreement, analysis of the likelihood of prevailing on the merits and the balancing of the equities clearly demonstrates the trial court's appropriate exercise of discretion in entering the preliminary injunction.

The Court of Appeal properly limited its review to an abuse of discretion standard. *Cohen* v. *Board of Supervisors* (1985) 40 Cal. 3d 277, 286-87, 219 Cal. Rptr. 467, 471-72. It did not attempt to substitute its judgment either on the likelihood of success on the balancing of the equities. *Id.* Rather, it quite properly looked only to determine whether the Superior Court "exceeded the bounds of reason or contravened the uncontradicted evidence." Slip. op. at 9. *See Continental Baking Co.* v. *Katz* (1968) 68 Cal. 2d 512, 67 Cal. Rptr. 761, 770.

Petitioner does not even attempt to show that the Court of Appeal departed from these accepted standards of review from a preliminary injunction order. He does not because he cannot. The petition should be denied.

II. Petitioners Cannot Show That the Injunction Violates Public Policy

A. The Important Public Policy In Favor of Settlement of Litigation Creates a Strong Presumption in Favor of Their Validity, and Requires That Settlement Agreements Be Construed To Render Them Valid

It is widely recognized that "[p]ublic policy supports both pretrial settlement of lawsuits and enforcement of judicially supervised settlements." *Phelps* v. *Kozakar* (1983) 146 Cal. App. 3d 1078, 1082, 194 Cal. Rptr. 872, 874. *Accord*, *Fisher* v. *Superior Court* (1980) 103 Cal. App. 3d 434, 437, 440-41, 163 Cal. Rptr. 47, 49, 52; *Ford* v. *State* (1981) 116 Cal. App. 3d 507, 517-518, 172 Cal. Rptr. 162, 167-68. Indeed, this important public policy predates the modern explosive expansion of litigation. It long has been stated that settlement agreements "are highly favored as productive of peace and goodwill in the community, and reducing the expense and persistency of litigation." *McClure* v. *McClure* (1893) 100 Cal. 339, 343, 34 P. 822, 824. *See Potter* v. *Pacific Coast Lumber Co.* (1951) 37 Cal. 2d 592, 602, 234 P.2d 16.

Similarly strong policies supporting settlement of disputes and enforcement of settlement agreements are followed in other jurisdictions and in the federal courts, whose holdings and observations thus are equally pertinent here. For example, in *Pennwalt Corp.* v. *Plough, Inc.*, 676 F.2d 77 (3d Cir. 1982), *cited with approval in TNT Marketing* v. *Agresti*, 796 F.2d 276, 278 (9th Cir. 1986), the Third Circuit reversed a district court's denial of a motion for a preliminary injunction sought to enforce provisions of a settlement agreement. The court noted the strong judicial policy in favor of settlements:

> Voluntary settlement of civil controversies is in high judicial favor. Judges and lawyers alike strive assiduously to promote amicable adjustments of matters in dispute, as for the most wholesome of reasons they certainly should. When the effort is successful, the parties avoid the expense and delay incidental to litigation of the

> issues; the court is spared the burdens of a trial and the preparation and proceedings that must forerun it.

Pennwalt Corp., 676 F.2d at 80, *quoting Autera* v. *Robinson,* 419 F.2d 1197, 1199 (D.C. Cir. 1969). The Ninth Circuit fully concurs in this policy and has countenanced the summary enforcement of settlement agreements in circumstances such as here, where one party to an agreement has not observed its side of the bargain. *Matter of Springpark Associates*, 623 F.2d 1377 (9th Cir.), *cert. denied*, 449 U.S. 956 (1980):

> . . . a litigant can no more repudiate a compromise agreement than he could disown any other binding contractual relationship. . . . Moreover, it is equally well settled in the usual litigation context that courts have inherent power summarily to enforce a settlement agreement with respect to an action pending before it; the actual merits of the controversy become inconsequential. . . .

623 F.2d at 1380, *quoting Dacanay* v. *Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

The importance of adhering to the terms of a settlement agreement was emphasized by the district court in *In re Franklin National Bank Securities Litigation*, 92 F.R.D. 468 (E.D.N.Y. 1981), *aff'd sub nom.*, *Federal Deposit Insurance Corp.* v. *Ernst & Ernst* 677 F.2d 230 (2d Cir. 1982):

> The settlement agreement resulted in the payment of substantial amounts of money and induced substantial changes of position by many parties in reliance on the condition of secrecy. For the court to induce such acts and then to decline to support the parties in their reliance would work an injustice on these litigants and make future settlements. . . less likely.

92 F.R.D. at 472. In affirming, the Second Circuit held that "once a confidentiality order has been entered and relied upon, it can only be modified if an 'extraordinary circumstance' or 'compelling need' warrants the requested modification." 677 F.2d at 232.

Similarly, in *Federal Leasing* v. *Underwriters at Lloyd's*, 650 F.2d 495, 499-501 (4th Cir. 1981), the Fourth Circuit affirmed a district court's grant of a preliminary injunction sought to enforce provisions of a settlement agreement. Notably, the Fourth Circuit pointed out that where risk to good will is asserted as an element of the irreparable injury, such injury is a sufficient basis for a preliminary injunction, for such damage is "incalculable -- not incalculably great or small, just incalculable." *Federal Leasing*, 650 F.2d at 500, *quoting Blackwelder Furniture Co.* v. *Seiling Manufacturing Co.*, 550 F.2d 189, 197 (4th Cir. 1977). So too, here.

For these reasons, it has long been the law that settlement agreements should be construed to render them valid, and, as so construed, should be enforced:

> The power to invalidate agreements on the ground of public policy is so far-reaching and so easily abused that it should be called into action only in cases where the dangerous tendency *clearly and unequivocally appears from the contract itself.* Courts are reluctant, therefore, to declare a contract void as against public policy, and *will refuse to do so if by any reasonable construction if may be upheld.*

Maryland Casualty Co. v. *Fidelity & Casualty Co. of New York* (1925) 71 Cal. App. 492, 497, 236 P. 210 (1925) (emphasis added). *Accord*, *Moran* v. *Harris* (1982) 131 Cal. App.3d 913, 919-920, 182 Cal. Rptr. 519, 522. Furthermore, the "burden is on the defendant to show that its enforcement would be in violation of the settled public policy of [California]." 182 Cal.Rptr. at 523. In addition, courts may not "encroach upon the lawmaking branch of government in the guise of public policy unless the challenged transaction is contrary to a statute or some well-established rule of law." *Id.* As we show in the following pages, Armstrong clearly has not carried his burden to show that the provisions of the agreement enforced by the Superior Court was "clearly and unequivocally" contrary to public policy.

B. The Court of Appeal Correctly Held That the Superior Court Did Not Abuse Its Discretion in Finding That Preliminary Limited Enforcement of the Settlement Provision Prohibiting Armstrong From Assisting Actual or Potential Adverse Litigants Would Not Violate Public Policy or Result in Suppression of Evidence

The Superior Court's preliminary injunction prohibits Armstrong from voluntarily assisting potential or actual adverse litigants of the Church. It excludes assistance to government entities, and it permits Armstrong to accept subpoenas without taking evasive action and to testify pursuant to subpoena.

Armstrong argues that, as enforced, the settlement agreement violates public policy because it suppresses evidence. It does no such thing. Armstrong remains as free -- indeed, as *obligated* -- as anyone else to accept and respond to subpoenas calling for his testimony. He remains as free -- and obligated -- as anyone else to report criminal activity or to cooperate with government entities. He simply may not do what he has been doing contrary to his settlement agreement -- voluntarily working to assist other litigants against the Church. Indeed, the evidence demonstrates that Armstrong has made a career -- if not an obsessive crusade -- out of such activity. This is precisely what the Church paid him not to do pursuant to Section 7G of the settlement agreement (081).

Contrary to appellant's arguments, public policy favors enforcement of the settlement agreement. "Public policy supports both pretrial settlement of lawsuits and enforcement of judicially supervised settlements." *Phelps* v. *Kozakar* (1983) 146 Cal. App. 3d 1078, 1082, 194 Cal. Rptr. 872, 874. *See* discussion, *ante*. It is settled law in California, as everywhere else, that the consideration for a contract "may be forbearance to sue on a claim, extension of time, or any other giving up of a legal right." 1 Witkin, *Summary of California*

Law, Contracts § 214 at 223 (9th ed. 1987). *Accord, e.g., Louisville Title Insurance Co.* v. *Surety Title Guarantee Co.* (1962) 60 Cal. App.3d 781, 793, 132 Cal. Rptr. 273. The confidentiality and non-assistance provisions thus are entirely proper. These provisions prohibit Armstrong from acting *voluntarily*; they recognize Armstrong's legal obligation to testify when "compelled to do so by lawful process." The provisions establish a contract not to do what Armstrong could *choose* not to do prior to entering into the contract. Since Armstrong had the legal right *prior* to entering into the agreements to maintain confidentiality and to refrain from voluntarily assisting others engaged in proceedings adverse to the Church, Armstrong's argument that he could not contract to refrain from such conduct in the future is frivolous.

In addition, Armstrong's contention was recently rejected both by a California appellate court and a district court applying California law. *Philippine Export and Foreign Loan Guarantee Corp.* v. *Chuidian* (1990) 218 Cal. App.3d 1058, 267 Cal. Rptr. 457, *review denied* (1990), 1990 Cal. Lexis 2305; *Chuidian* v. *Philippine National Bank*, 734 F. Supp. 415 (C.D. Cal. 1990). In *Philippine Export*, a party claimed that an agreement was illegal because it purportedly required him to lie or to suppress evidence, and because it allegedly had been procured by fraud and duress. The California appellate court concluded, as a matter of law, that an agreement requiring confidentiality did not amount to suppression of evidence and did not contain an illegal term. *Id.* at 469. The court distinguished cases involving agreements containing a warranty of silence or to suppress evidence in an ongoing litigation or administrative proceeding, and concluded:

> The agreement to keep the settlement private was not an agreement to suppress evidence and was not illegal. Our experience with litigation in the Silicon Valley is that such agreements are routine here. Chuidian's agreement to turn over his copies of his

> deposition . . . is similarly not shown as a matter of law to be an act which has a tendency to suppress evidence. . . . Chuidian's agreement did not suppress nor withhold evidence from the court or from any party to the lawsuit. Accordingly, we hold that the consideration for the settlement was not illegal as a matter of law.

Id.

In the second case, *Chuidian* v. *Philippine National Bank*, the federal district court evaluated the same provision under California law and held that, unless a party is obligated by law to disclose the information, he is free to bargain away his right to disclose that information.

> Many lawsuits are settled for the sole purpose of avoiding the public disclosure of embarrassing or private information. Such is not illegal because it does not call for the suppression of evidence at a trial or proceeding, but rather is merely a motive behind settling the dispute.

734 F. Supp. at 424.

Wakefield v. *Church of Scientology of California*, 938 F.2d 1226 (11th Cir. 1991), involved an enforcement of a settlement agreement virtually identical to the agreement at issue here. As recounted in the opinion of the Eleventh Circuit:

> Wakefield publicly violated the settlement agreement's confidentiality provisions.
>
> In 1987, both the Church and Wakefield filed motions to enforce the settlement agreement. . . . On September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefiled had violated the settlement agreement, and the Church had fully complied with [it]. . . . On May 16, 1989, the district court adopted the magistrate judge's report [and] issued a preliminary and permanent injunction against Wakefield.

938 F.2d at 1227.[7/]

[7/] The Court of Appeals' opinion did not deal with the merits of the injunction issue, but (continued...)

None of the cases relied on by Armstrong supports his argument. In *Brown* v. *Freese* (1938) 28 Cal. App.2d 608, 618, 83 P.2d 82, the court held *valid* a provision which one party argued required confidentiality, but refused specific performance of the provision because it was too uncertain. *Mary R.* v. *B. & R. Corp.* (1983) 149 Cal. App.3d 308, 316, 196 Cal. Rptr. 871, 875, provides no support for the Armstrong's position. In that case, the court considered the balance which should be struck where a nonparty sought to collaterally attack the validity of a sealing order made pursuant to settlement. In *Mary R.*, the underlying suit involved allegations of sexual molestation by a physician of a fourteen-year-old patient. The suit was settled, allegedly for financial consideration paid by the physician. The court ordered the court file sealed as part of the settlement. After the settlement, the state Division of Medical Quality moved to intervene to unseal the records in order to fulfill its statutory duty to supervise the practice of medicine in the state. The trial court denied the motion to unseal. The appellate court remanded for reconsideration of the balance of factors to determine whether the sealing order should be upheld. Central to the *Mary R.* court's decision was the fact that the sealing order prevented the Division of Medical Quality from carrying out is *statutory obligations* to discipline misconduct of physicians. 149 Cal. App.3d at 315, 196 Cal. Rptr. at 875. No similar statutory duty exists in this case. Indeed, the preliminary injunction explicitly permits Armstrong to assist government entities and to report criminal acts.

As we have shown, California courts do not indiscriminately invoke public policy to refuse to enforce any contract which, in other circumstances, might arguably contravene public

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[7] (...continued)
did note "Wakefield's constant disregard and misuse of the judicial process. . ." *Id.* at 1230.

policy. "Courts are reluctant, therefore, to declare a contract void as against public policy,and *will refuse to do so if by any reasonable construction it may be upheld.*" *Maryland Casualty Co.* v. *Fidelity & Casualty Co. of New York*, (1925) 71 Cal. App. 492, 497, 236 P. 210. Armstrong clearly has not carried his burden to show that the relevant term of the settlement agreement, at issue here, as construed and preliminarily applied by the Superior Court, was "clearly and unequivocally" contrary to public policy at the time the agreement was made. *Moran* v. *Harris*, (1982) 131 Cal. App.3d 913, 919-920, 182 Cal. Rptr. 519, 522, *quoting Stephens* v. *Southern Pacific Co.* (1895) 109 Cal. 86, 89-90, 41 P. 783.

III. Petitioner Raises No Valid Claim of "Estoppel" or "Unenforceability"

A. Petitioner is Barred From Raising These Claims Here Because He Made No Such Argument in the Court of Appeal

In Part III(E) of his petition, Armstrong argues that the Church's lawsuit was barred by the doctrine of collateral estoppel, because of a prior purported decision on the merits by Judge Geernaert. In a related Point III(F), Armstrong asserts that the settlement agreement was not enforceable because it had not been filed with the Court in the underlying action which was settled.

Armstrong did not make these arguments in the Court of Appeal. Even his "shotgun-style brief" in that court did not include such preposterous arguments. That fact alone

precludes his seeking review on such questions from this Court. Supreme Court Rule 29(b)(1).

B. Petitioner Raises No Important Question of Law and Conflict Among the Lower Courts

Since Armstrong did not raise his "estoppel" or "unenforceability" arguments below, it naturally, it naturally follows that the Court of Appeal did not address them. Accordingly, Armstrong cannot and does not point to an important question of law that this Court must settle or upon which it must secure uniformity. *See* Supreme Court Rule 29(a)(1). Since no appropriate grounds for review are set forth, the petition must be denied.

C. Judge Geernaert Made No Determination of the Merits

Judge Geernaert never ruled on the merits of the Church's claim. Rather, he held that the claim must be brought as a separate action for breach of contract. That is what the Church subsequently did. Thus, Judge Geernaert's decision could not estop the subsequent lawsuit.

D. The Settlement Agreement Did Not State That It Could Only Be Enforced in the Original Armstrong Action

The settlement agreement did *not* provide that it would be *filed* in the original Armstrong lawsuit. Petitioner's statements to the contrary are made of whole cloth; nowhere in the agreement is there such a clause.

The agreement does provide for the continuing jurisdiction of the court in the original Armstrong action, should any disputes arise under the agreement. It does *not* state that such jurisdiction is exclusive.

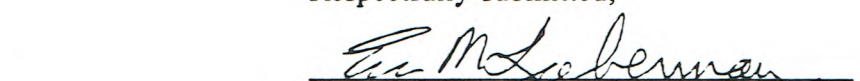
Indeed, the Church sought to invoke the continuing jurisdiction clause by first filing a motion for enforcement in the original action. Armstrong opposed that motion on jurisdictional grounds, and, as we have seen, Judge Geernaert agreed. Judge Geernaert directed the Church to file a *de novo* action, which it did.

Armstrong's position is that the settlement contract -- a valid contract -- is unenforceable in any court. His position is utterly without merit or legal support, and provides no ground for this Court to grant review.

CONCLUSION

For the reasons stated, the petition for review should be denied.

Respectfully submitted,



ERIC M. LIEBERMAN
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
740 Broadway, 5th Floor
New York, N.Y. 10003
(212) 254-1111

MICHAEL LEE HERTZBERG
740 Broadway, 5th Floor
New York, N.Y. 10003
(212) 982-9870

ANDREW H. WILSON
State Bar No. 063209
Wilson, Ryan & Campilongo
235 Montgomery Street, Suite 450
San Francisco, CA 94104
(415) 391-3900

Attorneys for Plaintiff and Respondent

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CERTIFICATE OF SERVICE

I, ERIC M. LIEBERMAN, hereby certify that on this 14th day of July, 1994 I caused the Answer To Petition For Review to be served on the following, by causing a true copy thereof to be mailed first-class, postage prepaid, in sealed envelopes, addressed as follows:

Second District Court of Appeal
300 South Spriong
Room 2228
Los Angeles, California 90013

Clerk, Superior Court
State of California
County of Los Angeles
111 North Hill Street
Los Angeles, California 90012

Ford Greene
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949

Paul Morantz, Esq.
P.O. Box 511
Pacific Palisades, California 90272

Graham E. Berry, Esq.
Lewis, D'Amato, Brisbois & Bisgaard
221 North Figueroa Street
Suite 1200
Los Angeles, California 90012

Eric M Lieberman

ERIC M. LIEBERMAN